

1 ROBERT W. THOMPSON (7646)
2 RWT@scmlaw.com
3 SNOW CHRISTENSEN & MARTINEAU
4 10 Exchange Place, 11th Floor
5 Salt Lake City, Utah 84111
6 TEL: 801.521.9000
7
8 JULIE E. MAURER (*pro hac vice*)
9 julie.maurer@lewisbrisbois.com
10 VENUS G. BOOTH (*pro hac vice*)
11 venus.booth@lewisbrisbois.com
12 LEWIS BRISBOIS BISGAARD & SMITH LLP
13 2929 N. Central Avenue, Suite 1700
14 Phoenix, Arizona 85012
15 TEL: 602.385.1040
16 FAX: 602.385.1051
17 *Attorneys for Harbor Freight Transport Corp.*

12
13 **IN THE UNITED STATES DISTRICT COURT**
14 **DISTRICT OF UTAH, CENTRAL DIVISION**

15 DELTA STONE PRODUCTS,

16 Plaintiff,

17 v.

18 XPRTFREIGHT, US EXPRESS, LLC,
19 EMBASSY CARGO S.P.A. HARBOR
20 FREIGHT TRANSPORT CORP., RSA -
21 SUN INSURANCE OFFICE, LTD.,
22 SERAN SALAMON, an individual, RAFIK
23 NAZAROV, an individual, and DOES 1
through 10,

24 Defendants.

Case No.: 2:16-cv-00369-CW-EJF

**DEFENDANT/CROSS-DEFENDANT
HARBOR FREIGHT TRANSPORT
CORP.'S MOTION FOR LEAVE TO
FILE SUPPLEMENTAL BRIEF IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT AS TO
PLAINTIFF'S CARMACK
AMENDMENT CLAIM BASED ON
NEWLY ACQUIRED EVIDENCE**

Judge Clark Waddoups
Magistrate Judge Evelyn J. Furse

24 Defendant/Cross-Defendant Harbor Freight Transport Corp. ("Harbor Freight"), by
25 and through its attorneys, moves for leave to file the attached supplemental briefing (Exhibit
26 A) based on newly acquired evidence after its pending Motion for Summary Judgment was
27 filed and briefed (Doc. 102; Doc. 122). In support, Harbor Freight states as follows:

1 1. Defendant US Express, LLC (“US Express”) deposed Plaintiff Delta Stone’s
2 (“Plaintiff”) Rule 30(b)(6) representative, Aaron Hicken, on November 7, 2017. Mr.
3 Hicken, as Plaintiff’s corporate representative, bound Plaintiff by his testimony.

4 2. Specifically, Plaintiff expressly testified and admitted it had knowledge that
5 *US Express and US Express alone* caused the alleged damages to the Shipment upon
6 immediate arrival of the shipment—well before filing this lawsuit.

7 3. Mr. Hicken maintained throughout his deposition that Defendant US Express
8 caused the damages to the Shipment.

9 4. As such, Mr. Hicken’s testimony, as Plaintiff’s corporate representative,
10 establishes that Defendant US Express caused the alleged damage that forms the basis of
11 this lawsuit, that Plaintiff believed Defendant US Express alone caused the alleged damage,
12 and that Defendant US Express admitted that it caused the alleged damaged on numerous
13 occasions.

14 5. There never existed any good faith basis to name Harbor Freight as a
15 Defendant in this action.

16 6. As set forth above, US Express’ driver and corporate representatives
17 repeatedly admitted that it caused the alleged damage to the subject cargo.

18 7. After Plaintiff’s deposition, Harbor Freight sent correspondence to Plaintiff’s
19 counsel requesting immediate dismissal since Plaintiff’s own corporate representative
20 admitted that he had knowledge since the delivery of the Shipment that it was US Express
21 and US Express alone that caused the damage.

22 8. Despite this knowledge and testimony, Plaintiff continues to deny voluntary
23 dismissal of Harbor Freight from this action, prompting Harbor Freight to seek leave to file
24 that attached supplemental briefing and unnecessarily burden the Court.

25
26
27
28

1 For the foregoing reasons, Harbor Freight respectfully requests that the Court grant
2 Harbor Freight leave to file the attached supplemental briefing for consideration.

3 DATED this 1st day of December, 2017.

4 Respectfully Submitted,

5
6 By: s/ Robert W. Thompson

7 Robert W. Thompson
8 SNOW CHRISTENSEN & MARTINEAU
9 10 Exchange Place, 11th Floor
10 Salt Lake City, Utah 84111

11 Julie E. Maurer (*Admitted Pro Hac Vice*)
12 Venus G. Booth (*Admitted Pro Hac Vice*)
13 LEWIS BRISBOIS BISGAARD SMITH
14 LLP
15 Phoenix Plaza Tower II
16 2929 North Central Avenue, Suite 1700
17 Phoenix, Arizona 85012-2761

18 *Attorneys for Defendant*
19 *Harbor Freight Transport Corp.*
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of December, 2017, the foregoing
**DEFENDANT/CROSS-DEFENDANT HARBOR FREIGHT TRANSPORT CORP.'S
MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT AS TO PLAINTIFF'S CARMACK
AMENDMENT CLAIM BASED ON NEWLY ACQUIRED EVIDENCE** was filed
electronically with the Court through the CM/ECF system, which will provide electronic
notice to the following:

Greggory J. Savage
Gregory S. Roberts
RAY QUINNEY & NEBEKER P.C.
36 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, Utah 84145
Attorneys for Plaintiff Delta Stone Products

Paul M. Belnap
Nicholas E. Dudoich
STRONG & HANNI
102 South 200 East, Suite 800
Salt Lake City, Utah 84111
Attorneys for US Express, LLC

Andrew D. Kehagiaras
ROBERTS & KEHAGIARAS LLP
One World Trade Center, Suite 2350
Long Beach, California 90831
Attorney for Embassy Cargo, Inc.

Mark B. Thornton
Stevan R. Baxter
OLSEN SKOUBYE & NIELSON
999 E. Murray Holladay Rd, Suite 200
Salt Lake City, Utah 84117
Attorneys for Xpertfreight

Jeffery Scott Williams
NELSON CHRISTENSEN HOLLINGWORTH &
WILLIAMS
68 S. Main Street, Suite 600
Salt Lake City, Utah 84101
Attorney for RSA – Sun Insurance Office Ltd.

By: /s/ Robert W. Thompson